



UNITED STATES SURGICAL,
A DIVISION OF TYCO HEALTHCARE GROUP LP
195 MCDERMOTT ROAD
NORTH HAVEN CT 06473

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SEP 22 2006

OFFICE OF PETITIONS

In re Application of
Finch et al.

Application No. 09/739,428

Filed: December 18, 2000

Attorney Docket Number: 2537

Title of Invention: Apparatus For Thermal
Treatment of an Intervertebral Disc

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ON PETITION

This is a decision on the petition filed July 12, 2006, under 37 CFR 1.137(b) to revive the above-identified application.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. §704.

This application became abandoned for failure to timely submit the issue and publication fees, as required by the Notice of Allowance and Fee (s) Due and submit corrected drawings, as required by the Notice of Allowability both of which were mailed March 20, 2006. The Notice of Allowance and Fee (s) Due and the Notice of Allowability set a three (3) month statutory period for reply. Extensions of time were not available under the provisions of 37 CFR 1.136(a). A supplemental Notice of Allowability was mailed on June 16, 2006. Accordingly, this application became abandoned on June 21, 2006. A Notice of Abandonment was mailed on August 28, 2006.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a

statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was intentional"; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03 (c)(III)(c) and (D).

The instant petition lacks items (1). Petitioner has failed to submit corrected drawings as required by the Notice of Allowability. Corrected drawings must be submitted before the petition can be revived. Petitioner's contention that drawings are not required based upon a purported conversation with the examiner is not well received. Pursuant to 37 CFR 1.2 All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

If the person signing the present petition desires to receive future correspondence regarding this application a change of correspondence address must be submitted. While a courtesy copy of this decision is being mailed to the person signing the present petition, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile:

(571) 273-8300

By delivery service:

(FedEx, UPS, DHL, etc.)

U.S. Patent and Trademark Office
Customer Service Window,
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries should be directed to the undersigned at (571) 272-3215.

A handwritten signature in black ink, reading "Charlema R. Grant". The signature is fluid and cursive, with the first name "Charlema" being the most prominent part.

Charlema R. Grant

Petitions Attorney

Office of Petitions

cc: Edward Meagher
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